PUBLIC PROSECUTOR

v.

SUBRAMANIAM GOPALAN

HIGH COURT MALAYA, MALACCA
WAN YAHYA J
[CRIMINAL TRIAL NO. 1 OF 1984]
5 APRIL 1985

CRIMINAL LAW AND PROCEDURE: *Accused charged under s. 304 of Penal Code - Pleaded guilty - Sentenced to 7 years' imprisonment - Mitigating circumstances considered.*

The accused pleaded guilty to a charge under s. 304 of the Penal Code. The Court sentenced him to 7 years' imprisonment.

In mitigation, Counsel for the accused submitted that the accused had approached the deceased "with the intention of clearing up misunderstanding"; that the fight broke out unintentionally and that the accused had picked up a flat metal rod in contemplation of being attacked with a concealed weapon by the deceased. Counsel also described the accused's antecedent career and his success and implored the Court to treat him leniently so that his aged father would not be deprived of accused's support.

Held:

[1] The guidelines for imposing sentences should include consideration on the nature of the offence; the circumstances in which it was committed; the degree of deliberation shown by the offender; the provocation, if any, received by the accused; the degree of violence involved and the antecedents of the accused.

[2] There is no doubt at all that causing the death of another person under s. 304 of the Penal Code is a very serious offence. The circumstances in which the offence was committed showed that there was neither provocation nor that the accused acted in self-defence. If the accused believed that the deceased was so armed, there was no reason why he should not have fled from the scene instead of savagely attacking the deceased. The violent and vicious nature of the accused's atrocity is clearly reflected in the eighteen injuries suffered by the deceased. As regards the accused's antecedents, what was unfolded before the Court relate merely to his proficiency rather than his conduct. The events which transpired and led to the deceased's death clearly demonstrated the accused's unrestrainable, volatile and vengeful temper.

[3] In an offence of this nature, an imprisonment of 14 years would have been expedient had the learned Deputy Public Prosecutor referred to matters which would have placed the offence under the first limb of s. 304. The Court is therefore compelled to convict the accused under the second limb of s. 304 and to impose a sentence of 7 years only.

Case referred to:
Mohamed Jusoh bin Abdullah & Anor. v. PP [1947] 13 MLJ 130

Legislation referred to:
Penal Code, s. 304

For the public prosecutor - Abdul Rahim Uda, DPP
For the accused - Atma Singh Veriah

JUDGMENT

Wan Yahya J:

On 30 May 1984 the accused was committed by the Magistrate Malacca to stand trial before the High Court on a charge of murder. On the date of hearing in the High Court on 11 March 1985 the learned Deputy Public Prosecutor compassionately reduced the charge to one under s. 304 of the Penal Code. Upon the accused's uneqivocal plea of guilty, in the presence and hearing of his Counsel, this Court sentenced him to 7 years' imprisonment to run from and be back-dated to his date of arrest i.e over one year and two months previously. Albeit the accused somewhat feels that we have been unkind on him and has therefore preferred this appeal against that sentence.

The brief summary of events leading to this offence are as follows. The accused was the Chief Officer and the deceased the Chief Steward of the ship, M.V. Kota Rukun. On 18 January 1984 a mess steward who denied night snacks to the accused on the instruction of the deceased was assaulted by the accused. The deceased intervened and in turn punched the accused. The fight was stopped by members of the crew. However, the matter did not end there. Two weeks later when the ship Kota Rukun was unloading her cargos at Malacca harbour and her crew were on shore, the accused confronted the deceased as the latter was returning to the ship. During the ensuing fight the accused inflicted on the deceased numerous injuries with some kind of weapon, which defence Counsel describes as a flat metal rod picked up from the ground, resulting in almost instantaneous death of the deceased. The weapon was never found by the police.

In mitigation, Counsel for the accused submitted that the accused had approached the deceased "with the intention of clearing up misunderstanding"; that the fight broke out unintentionally and that the accused had picked up a flat metal rod in contemplation of being attacked with a concealed weapon by the deceased. Counsel also went up to some length to describe the accused's antecedent career and his success and implored this Court to treat him leniently so that his aged father would not be deprived of accused's support.

In *Mohamed Jusoh bin Abdullah & Anor. v. PP* [1947] 13 MLJ 130, the then Court of Appeal observed that the guidelines for imposing sentences should include consideration on the nature of the offence; the circumstances in which it was committed; the degree of deliberation shown by the offender; the provocation, if any, received by the accused; the degree of violence involved and the antecedents of the accused.

In our present case there is no doubt at all that causing the death of another person under s. 304 of the Penal Code is a very serious offence. As for the next four matters to be considered, defence Counsel claims that the incident was unplanned and arose out of provocation. I am unable to accede the learned Counsel's views. I cannot perceive the line of reasoning and neither did Counsel explain why the Chief Officer, the second highest ranking officer in the ship should chose the dark and desolate lane of Malacca dockyard at 9.30 at night as a suitable venue for sorting out misunderstanding with a Chief Steward in preference to the comforts of the ship's cabin and the advice of his ship mates. Neither was anything said about who threw the first punch or who started the fight. Likewise, I reject the accused's insinuation that he had struck the deceased in self-defence when the former was seen to be bending down in an act to draw what he believed to be a concealed weapon. If there was such a weapon it would have no doubt been found, either strapped to the deceased's legs or in the vicinity of his body. Even if the accused believed that the deceased was so armed,

there was no reason why he should not have fled from the scene as he had every opportunity of doing so. Instead, acting on mere suspicion and without even a glimpse of any weapon being used, he had taken what his counsel described as a flat metal rod and savagely attacked deceased. The violent and vicious nature of the accused's atrocity is clearly reflected in the eighteen injuries suffered by the deceased and as shown in the photograph in the records. The weapon was not recovered but whatever it was and howsoever described by the accused, it must have been a two edged knife. Judging from the gaping and penetrating wounds on the deceased's body, the nature of these injuries further indicate that they were inflicted in a stabbing rather than warding off blows. If the accused had resorted to the weapon merely to defend himself or to disarm the deceased, he had only to land a few blows with a flat metal rod instead of stabbing with it. The injuries on the deceased are inconsistent with those received in preventive or disarming motion by the accused. According to the doctor who performed the post-mortem the victim to such injuries would only have survived up to 3 minutes.

The last matter to be considered is the accused's antecedent. Unfortunately what was unfolded before this Court relate merely to his proficiency rather than his conduct. A swift scramble upwards the ladder of success does not in any way negate a person's dormient propensity. The events which transpired on 18 when the accused assaulted a mess steward for merely giving a negative answer to his request and the subsequent confrontation with deceased demonstrate his unrestrainable, volatile and vengeful temper.

In an offence of this nature, I consider the imposition of 14 years' imprisonment to be expedient with a view to the accused's reformation. Happily for him, the learned Deputy Public Prosecutor omitted to refer in the facts of the case matters which would have placed the offence under the first limb of this section. I am therefore compelled to convict the accused under the second limb of s. 304 of the Penal Code and to impose a sentence of 7 years only.

Also found at [1985] 2 CLJ 492